SUMMARY MINUTES

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Fifth Meeting in Negotiations Between the United States and Italian Delegations for a Treaty of Friendship, Commerce and Navigation

Approved:

Participants:

For the United States: Messrs. Ainsworth, Tasca, Setser.

For Italy: Messrs. Dall'Oglio, Simonis, La Rosa, Sorrentino, Cattani, Ippolito, De Rossi, De Luca, Ghelli, Maresca.

Time: 10:00 A. M. Thursday, September 25, 1947.

Place: Palazzo Chigi.

Article XIII

The American delegation requested the Italian negotiators to furnish a brief statement of the practice of the Italian Army with regard to the various steps by which a civilian is inducted into the armed forces during a time of general conscription. They stated that such a statement would be useful in explaining to their Government the position taken by the Italian delegation at the last meeting with regard to the time to be permitted for an alien to choose between service in the armed forces of the country of his residence and service with his national forces.

Article XIV

The Italian negotiators stated that they could accept the contents of this Article, with some explanations and exceptions, which would perhaps relate to the Additional Protocol as much as to this Article. They noted that the article is more rigid and specific than the modus vivendi of 1937. They hoped that economic conditions would improve, and they expected to be able to execute the engagements which they would make in accepting the Article. They stated that paragraphs 1, 2, and 3 were acceptable without change or interpretation.

They stated

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They stated that with respect to paragraph 4, however, there was a considerable difficulty. Italian import quotas are made effective through licenses. The issuance of a license to import any article is at present dependent upon the availability of exchange at the moment of the issuance of the license. Under present conditions in Italy, they stated, it is impossible to follow the proposed treaty rule requiring the giving of advance public notice of the quantity or value of such article to be imported. They inquired whether the phrase "as a general rule" would be construed to permit the waiver of public notice under such conditions as now exist in Italy. They also suggested that paragraph 1 of the Additional Protocol might be amended to refer to the whole instead of a part of paragraph 4 of Article XIV, in which case the "transitional period" provisions could be construed to authorize the waiver of public notice.

The American negotiators stated that they would bring the problem to the attention of their Government.

The Italian delegation proposed to add to paragraph 4 a phrase contained in the 1937 modus vivendi to the effect that the allocation of a quota to one party by the other could be dispensed with by mutual agreement. The American negotiators stated that they doubted that the proposal would be acceptable, since it would seem to imply that equality of treatment and the principle of nondiscrimination might be restricted by mutual agreement, but they stated that the language of the present paragraph, particularly the reference to the mutual consideration of "special factors" affecting the trade in a given commodity, which would permit one of the parties to reallot a quota unused by the other.

With respect to paragraph 5, the Italian delegation inquired how the word "reasonable", in the reference to requirements for documentary proof of origin of imported articles was to be construed. The American negotiators stated that they would consider that to be "reasonable" the requirements must not be unnecessarily burdensome and that they must be designed for the purpose of establishing the origin of the imports and not for the purpose of interfering with normal trade channels. The Italian delegation stated that paragraph 5 was acceptable to them.

ADDITIONAL PROTOCOL

The Italian negotiators stated that there was a correction that they wished to make in the preamble. They said that Italy did not make a declaration of co-belligerency with the Allies, but declared war against Germany. The looting followed this declaration of war. They proposed, therefore, that the words "the looting perpetrated by the German forces following the Italian declaration of co-belligerency with the Allies" should be changed to read "the looting perpetrated

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by the German forces following the Italian declaration of war against Germany."

The Italian negotiators stated that paragraphs 1 and 2 were acceptable to their Government.

With respect to paragraph 3, they requested an interpretation of the phrase "new restrictions", stating that it was not clear whether this referred to every specific action affecting the quantity of goods imported or exported or whether it referred to new measures which might alter the system of quantitative controls or change the general program of imports, and so forth. They stated that they could make public the system of controls and the import programs, and could give 30 days notice of changes therein, but that the issuance of licenses for individual products is made upon the basis of foreign exchange immediately available and accordingly could not be known in advance. They stated that the provision would be acceptable if changed to provide that notice of the imposition of new restrictions (broadly interpreted) would be given "as soon as possible".

The American negotiators pointed out that this provision was based upon a somewhat similar requirement included in the proposed charter of the International Trade Organization. They stated that they understood the Italian position and would request clarification and instructions from their Government.

The Italian delegation proposed the addition of a new paragraph 4 to the Additional Protocol, as follows:

> The two High Contracting Parties are in agreement, in the case of liquidation of the International Monetary Fund or withdrawal of either High Contracting Party, to enter as soon as possible into negotiations looking toward the conclusion of new agreements based upon the Articles of Agreement of the International Monetary Fund to which this Additional Protocol relates, in order to make substitution for paragraphs 3 and 4 of Article XIV of the Treaty and the provisions of this Additional Protocol as to quantitative restrictions on imports and exports.

The American negotiators stated that they would consult their Government, with regard to the Italian proposals.

Article XV

With respect to paragraph 1 of this Article, the Italian negotiators referred to the fact that in Italy judicial decisions have no general applicability as interpretations of the law, but apply only to the interested parties in a particular case. They are not published in a form which

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in a form which would make them available for reference purposes and there is no need for such publication. The Italian delegation proposed, therefore, that the reference to decisions of judicial authorities be qualified by the addition of a phrase such as "with a general interpretative importance."

With regard to paragraph 2, the Italian delegation stated that existing Italian law does not provide for any exemption for goods en route at the time that duties are advanced, and that the customs administration is opposed to the introduction of such procedure as is proposed in this paragraph. They stated, however, that the delegation would give further consideration to the matter if the American Government were unwilling to drop the provision. The American delegation stated that they doubted that their Government would be willing to drop the paragraph, that its purpose is to enable traders to carry through without loss transactions already initiated, and that a similar rule had been accepted by most of the more important trading nations in the proposed ITO Charter.

The Italian negotiators inquired whether the term "administrative ruling" was to be understood as including legislative acts, stating that in Italy advances in rates or charges are made only by legislative act, and not by ministerial decree. The American negotiators stated that they did not understand the term to include acts of the legislature, since the rule regarding the publication of laws is contained in paragraph 1 of this Article.

The Italian negotiators also asked whether goods were to be considered still en route after they were landed in the port of destination. The American delegation stated that it was their understanding that goods directed to a consignee would be considered en route until delivered to that consignee, but that they would have to consult their Government as to the detailed interpretation of the rule under reference.

The Italian delegation stated that in case their Government should accept the rule of this paragraph, it would be necessary to add a statement to the effect that the concession would be granted upon the basis of strict reciprocity, since the Government would not want to be obliged, under a most-favored-nation clause, to grant the concession to a third country without such country also granting it to Italy.

The Italian delegation stated that it had no objection to paragraph 3 of this Article, since the rights provided for therein are already accorded by Italian law. They stated that appeals from decisions of the Customs authorities may be prosecuted in the ordinary courts of justice, and that matters pertaining to tariff classification are within the jurisdiction of a special Board of Customs Experts, composed of nine members appointed by the Government and nine designated by the Chamber of Commerce. They stated that the opinions of

this Board

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this Board are advisory only and that the actual decision is made by the Minister of Finance, whose action is subject to review by the Council of State.

The Italian delegation indicated that it had no objection to paragraph 4 of this article. They stated, however, that they wished to take immediate advantage of the provision for "sympathetic consideration" in order to obtain such consideration for a request which had been made repeatedly through the Italian Embassy in Washington for a statement of the tolerances as to impurities permitted by the United States Government in imported food products. The American negotiators stated that it was their understanding that the Embassy in Washington had agreed to present a written memorandum on this subject to the Department of State, and that no action had been taken for the reason that no memorandum had been received. They stated that it would be desirable to make a definite request, specifying the specific food products in which the Italian Government is interested. The Italian negotiators stated that they were interested in obtaining the information on all food products, and would wish to propose an exchange of letters for the furnishing of such information by both Governments. The American negotiators stated that they would request their Government to give appropriate attention to this matter.

The Italian negotiators stated that their Government was interested (1) in being informed as to all regulations of the U.S. Government regarding impurity tolerances, (2) in being informed in advance of all changes in such regulations, (3) in making arrangements by exchange of notes or otherwise for concerted action with respect to impurity tolerances in food products.

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